IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE MR.JUSTICE K.K. DENESAN

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

MFA.No. 78 of 2002(B)

OP.363/1999 of FAMILY COURT,ERNAKULAM
.....

APPELLANT:

SUCHITHRA D/O. M.RADHAKRISHNAN NAIR,
RESIDING AT JANAKI MADHAVAN, ALLEPPEY.

BY ADV. SMT.ELIZABETH MATHAI IDICULLA
SRI.MOHAN IDICULLA ABRAHAM

RESPONDENTS: RESPONDENT

ANIL KRISHNAN, S/O. G.K.PILLAI,
RESIDING AT PLOT NO.298, GOURI,
PANAMPILLY NAGAR, COCHIN-682 036.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.P.PADMAKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON 13/04/2007 DELIVERED THE FOLLOWING:

I.A. NOS. 2285, 144/07 AND 1092 OF 2007

IN

M.F.A. 78 OF 2002

CLOSED

SD/- K.K.DENESAN, JUDGE

SD/- V. RAMKUMAR, JUDGE

13TH DAY OF APRIL 2007

K.K.DENESAN & V. RAMKUMAR, JJ.

M.F.A.NO. 78 OF 2002

Dated, 13th April 2007

JUDGMENT

Ramkumar, J.

This is the wife's appeal under sec.19(1)(i) of the Family Court's Act, 1984 challenging the order dt. 24.11.2001 in O.P.No.363/1999 on the file of the Family Court, Ernakulam. The said O.P. was filed by the respondent/husband under sec.13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty and sec.13 (1) (ib) on the ground of desertion.

THE HUSBAND'S PLEADINGS

2. The case of the respondent/husband in the petition for divorce is as follows:-

The petitioner (Anil Krishnan) and the respondent (Suchitra) are Hindus belonging to the Nair community. Their marriage was solemnized according to the customary rites at Sree Rama Mandir in Alappuzha on 8.6.1991. On the same day the petitioner and the respondent came to the petitioner's house at Ernakulam and thereafter they were living together at Ernakulam. Right from the beginning of their stay in the petitioner's family

house, the petitioner found the respondent behaving very strangely towards him and his parents. She exhibited anger and annoyance towards the petitioner and his parents. At first the petitioner thought that the respondent's behaviour was due to her initial inability to adjust to the life of a newly married wife. He tolerated her behaviour and lived as a loving husband. The respondent continued exhibiting cold behaviour and informed the petitioner that she had dislike for him and his parents and wanted to leave the matrimonial home. On 24.7.1991 the respondent went to her parental house at Alappuzha. Thereafter on 26.7.1991 the parents of the respondent informed the petitioner that the respondent was pregnant. The petitioner and his parents immediately went to the respondent's house at Alappuzha to take her back to the matrimonial home. Initially the respondent refused to go with them. She did not offer any explanation for her dislike to return to the matrimonial home. The respondent, however, came back to the matrimonial home on 4.8.1991 after much persuasion from the petitioner and also from the parents of both the petitioner and the respondent.

After returning to the matrimonial home, the respondent continued to be indifferent towards the petitioner and insisted that she be taken to her parental house. She had to be taken to Alappuzha on 30.8.1991. She was brought back on 20.9.1991, but on 2.10.1991 on her insistence the respondent was taken again to Alappuzha. Her parents brought her back on 3.10.1991. On 5.11.1991 she again went to her parental home at Alappuzha. The parents of the petitioner went to Alappuzha on the request of the petitioner to persuade the respondent to come and stay in the matrimonial home with the petitioner. As there was no justifiable cause for the respondent's failure to go and stay with the petitioner in the matrimonial home, her father brought her back to Ernakulam on 24.11.1991. On 12.12.1991 the parents of the respondent formally came to the petitioner's family house at Ernakulam to take her to Alappuzha for delivery. The abnormal and unreasonable attitude of the respondent had upset the petitioner very much. He had made many attempts to set right her attitude. The parents of the respondent informed the petitioner and his parents that the respondent's pregnancy had

adversely affected her. The respondent once informed the petitioner that she disliked him talking to his parents, relatives and close friends and that that was the reason for her anger and annoyance towards him. The petitioner tried to convince her that he was the only son of his parents, that he had duties towards his parents and that both the petitioner and the respondent should together socialise with close relatives and friends. The respondent, however, appeared to be unwilling to change her attitude and to communicate and mingle with everyone including the petitioner. During the period of pregnancy while the respondent was in Alappuzha, the petitioner and his parents had bestowed much care and attention on her by visiting her on 27.12.1991, 17.1.1992 and 26.2.1992. On 2.3.1992 also when the child was born, the petitioner and his parents had visited the respondent and thereafter also on many occasions after the birth of the child. The naming ceremony of the child was attended by the petitioner and his parents at Alappuzha and the child was named as Gouri. The respondent showed over-possessiveness over her daughter. She showed

repugnance to any physical contact which the petitioner had with the baby girl. The respondent displayed insufferable temperament and unrelenting anger towards the petitioner for no reason. She informed the petitioner on the date of the naming ceremony that their daughter would live in her parental home and that the petitioner should not make any claim over the child. When the petitioner showed signs of reacting to the respondent's statements, his parents tried to reason out with him saying that the respondent was behaving abnormally due to the fact of her pregnancy at a very early age and that the petitioner should tolerate her behaviour for some time. The petitioner could not understand the reason for the over-possessiveness shown by the respondent towards the baby child because she had told him that she was basically a career-oriented person and did not want children. The respondent showed no sign of wanting to come and stay in the matrimonial home. On 3.9.1992 the respondent left for Alappuzha. On 6.9.1992 the rice-feeding ceremony of the baby was conducted at Chottanikkara temple and the respondent had returned to the matrimonial home. The

respondent never changed her attitude towards the petitioner even after 7 months of delivery. The respondent's attitude towards the petitioner was not like one towards a husband. She never gave him affection or consideration. She never attended to any work in the family. She always seemed to be brooding over imaginative issues and even started picking up quarrels with the petitioner for no reason. The petitioner was put to considerable agony on account of the respondent's words as well as behaviour. On 25.10.1992 the respondent again went to her parental house along with the daughter. On 8.11.1992 she, along with her daughter, was brought back to the matrimonial home by her father. On 1.12.1992 he parents of the respondent had to come and console the petitioner who had suffered agony due to the unreasonable anger of the respondent. On 17.1.1993 the respondent insisted to go to her parental home to attend a marriage. She was brought back by her parents on 25.1.1993. On 9.2.1993 she again went to her parental house to attend her father's 60th birthday celebrations. She did not return to her matrimonial home. The petitioner's parents went over to her and

persuaded her to come back to Ernakulam to celebrate the daughter's first birthday at Ernakulam. She came back to the matrimonial home on 11.2.1993 and resided there with the petitioner till 28.2.1993 on which day without giving any reason she left the matrimonial home along with her daughter. The petitioner had not given his consent to the respondent to leave the matrimonial home. It was without the consent and against the wish of the petitioner that the respondent left for Alappuzha. There was no reasonable cause or any conduct on the part of the petitioner so as to induce the respondent to leave her matrimonial home. The petitioner and his parents attempted to persuade the respondent to come back to her matrimonial home. On 16.5.1993 and on 4.7.1993 even though the respondent was brought back to the matrimonial home by her parents, she did not reside there with the petitioner, but went away to her parental house without the consent of the petitioner. Her parents had again brought her to the matrimonial home on 19.9.1993, but she left along with her parents on that day. Again on 31.10.1993 the respondent's parents brought her back to the

matrimonial home. On both the above occasions she expressed her unwillingness to reside with the petitioner. She behaved very indifferently towards the petitioner and left the matrimonial home. She did not permit the petitioner to have access to his daughter. Her parents pleaded with the petitioner not to make an issue regarding the child until the respondent's temperament became normal. The respondent had taken her ornaments from the matrimonial home during the occasions when she had visited her own house while staying in the matrimonial home. The respondent refused money from the petitioner for the maintenance of her daughter stating that it was a ruse on the part of the petitioner to get hold of his daughter. The respondent's parents continued to entertain the respondent's strange attitude stating that time would heal her unreasonable behaviour and pleaded with the petitioner not to react and upset their daughter. On the advice of her parents and out of goodwill towards her family, the petitioner waited for the return of his wife to the matrimonial home till March, 1976. When the parents of the petitioner enquired with the respondent as to whether her

intention was to divorce their son, she replied that she would make the petitioner's life miserable. She, however, did not reveal any reason for proclaiming so. Thereafter during the years 1996-99 well-wishers of the family unsuccessfully attempted an amicable settlement. The respondent did not, however, come back to her matrimonial home and reside with the petitioner after 28.2.1993. The respondent abandoned the petitioner and deprived him of the company of his daughter without any reasonable cause. With effect from 28.2.1993 the respondent deserted the petitioner. She left the matrimonial home on that day with the intention of bringing to an end her co-habitation with the petitioner. There has been continuous separation of the respondent from the petitioner with effect from 28.2.1993 causing desertion. During this long period of more than six years, the respondent had never enquired about the petitioner. There has been total repudiation of her marital obligations by the respondent. All efforts made by the petitioner and his parents to provide for the daughter of the petitioner did not succeed. His daughter is living with the respondent's

parents. Till recently the respondent was living in her parental home. Now it is understood that she has left the parental home so as to study for degree in law at Cochin University leaving the daughter with her parents. The petitioner had not attempted to precipitate these issues with the respondent fearing that it would affect their daughter. Moreover, the petitioner thought that being a tender child, she would require the care of the mother during her early years. Since the child is presently deprived of her mother's company also, the petitioner is desirous of gaining custody of the child. The respondent's attitude towards the petitioner while in the matrimonial home had made the life of the petitioner miserable. Her persistent anger and aloofness had inflicted great pain and misery on the petitioner. She had caused mental cruelty towards the petitioner by means of constant ill-treatment. While leaving the matrimonial home she had collected her remaining ornaments and saris thus indicating her animus deserendi. The respondent had thus willfully terminated co-habitation with the petitioner without his consent and against his will. The marriage was solemnized at

Alappuzha. The petitioner and the respondent set up their matrimonial home at Ernakulam and they last resided together at Ernakulam. The petitioner is residing at Ernakulam and the respondent is residing at Alappuzha. The cause of action for the petition arose during the period 1991-93 when the respondent deserted the petitioner. Hence the marriage of the petitioner with the respondent may be dissolved on the ground of desertion and cruelty.

THE WIFE'S PLEADINGS IN REPLY

3. The respondent wife, namely Suchitra, filed her objections contending inter alia as follows:-

The petition is not maintainable either on law or on facts. Except to the extent expressly admitted hereunder, this respondent denies all the averments in the petition. The date and place of marriage between the petitioner and this respondent are admitted. After the marriage they were residing together as man and wife in the petitioner's house at Ernakulam.

The petitioner's allegation that this respondent did not show any love and affection towards the petitioner and his parents is not true. This respondent was never angry towards the petitioner or his parents. She loved the petitioner and respected his parents. There was no occasion for this respondent to become angry towards the petitioner or his parents. The petitioner's parents, particularly his father, had daughterly affection towards this respondent. Even now she loves the petitioner and holds his parents in high esteem. The averments in the petition that this respondent had told the petitioner that she disliked him and his parents and had expressed a desire to leave the matrimonial home is absolutely false and hence denied. To begin with, this respondent had a happy married life with the petitioner. The petitioner's father hails from a family of noble traditions and his parents and other relatives were closely known to this respondent's parents. Therefore, when the proposal for the marriage came, there was no necessity for this respondent's parents to think twice about the marriage. The proposal was immediately accepted and the marriage also took place within a

month. After the marriage this respondent was living in the marital home discharging all her marital obligations towards the petitioner as a dutiful wife. The parents of the petitioner and other relatives also treated this respondent with love and affection. On 14.6.1991 there was a family get-together in this respondent's parental home. The petitioner, his parents and many of his close relatives participated in the said function. This respondent's father presented a valuable jewel-studded ring (Navaratna Mothiram) to the petitioner on that occasion as a token of his love and affection. The petitioner along with his parents and this respondent went to Bangalore on 19.6.1991. They returned to Ernakulam on 24.6.1991. The petitioner who was an M.B.A., got a job in the Birla Tyres and the entire family was happy over this assignment. Thereafter, on 1.7.1991, 6.7.1991 and 7.7.1991 this respondent and the petitioner had resided together at Alappuzha at this respondent's house. It was not on her own accord that this respondent had gone to Alappuzha on 24.7.1991. The petitioner's father's birthday fell on that day and it was for celebrating the same that the entire

family went to Chavara in the evening of 23.7.1991. After the birthday celebration, this respondent had felt exhausted and she had stayed back at Alappuzha as advised by the petitioner. On 25.7.1991 this respondent was taken to a lady doctor for medical examination and she was reported to be pregnant. This news was conveyed to the petitioner. Hearing the said news, the petitioner and his parents came down to Alappuzha on 26.7.1991. On that day the petitioner and his parents did not ask this respondent to return to Ernakulam because the 90th birthday of this respondent's paternal grandmother was on 1.8.1991 and this respondent wanted to participate in the said function along with the other members of her family. Since Fridays and Saturdays were not astrologically auspicious days for a pregnant woman to return to her matrimonial home this respondent was taken to her marital home on Sunday i.e. 4.8.1991 by her father and sister. The petitioner had come to Ernakulam South Railway Station to take them to his house. These facts have been deliberately suppressed in the petition. The petitioner and this respondent were residing happily at

Ernakulam. This respondent did not show any indifference towards the petitioner as alleged nor had she insisted on returning to Alappuzha. This respondent's 23rd birthday was on 2.9.1991 and for that purpose she was taken to Alappuzha by the petitioner on 30.8.1991. The petitioner did not come for the birthday and this was not deliberate. His parents, however, came to Alappuzha and gave birthday presents and had greeted this respondent on that occasion. On 20.9.1991 tis respondent was taken to Ernakulam by her parents-in-law. It is true that on 2.10.1991 this respondent had gone back to Alappuzha along with her parents-in-law. This respondent's father-in-law is a native of Chavara and he used to go there frequently to meet his aged parents. Therefore, on 2.10.1991 when they went to Chavara, they wanted this respondent also to accompany them. When they returned on 3.10.1991, this respondent also went back to Ernakulam along with them. It is false to state that it was this respondent's parents who took her to Ernakulam on 3.10.1991. On 5.11.1991 i.e. on the Deepavali day, this respondent's parents had come over to Ernakulam with various

items of sweets to this respondent as she was pregnant at that time. This was done in accordance with the custom prevalent in the community. This respondent was informed that her husband was leaving for Madras on the next day and, therefore, if she wanted, she could also go to Alappuzha along with her parents. This respondent also wanted to attend her friend's marriage at Alappuzha on 8.11.1991. Therefore, as permitted by the petitioner and his parents, on 5.11.1991 this respondent went to Alappuzha with her parents. It is not correct to say that the petitioner's parents had come to Alappuzha to persuade this respondent to return to Ernakulam and resume co-habitation. Though the petitioner's parents had come to Alappuzha on 19.11.1991, they advised this respondent to stay back as Tuesday was not considered auspicious to undertake a travel. So this respondent was taken to Ernakulam by her parents on 24.11.1991. On 12.12.1991 this respondent was brought back to her parental home for confinement in accordance with the customary rites. There was no abnormality in the behaviour of this respondent either towards the petitioner or towards his

parents. She was sociable and mingled with all the members of the family. Although she was fresh from the college, she looked after the household affairs and helped her mother-in-law in cooking food and managing the house. She never kept aloof as stated in the petition. This respondent's parents are cultured and they had brought up all their children in an ideal way. While she was a student, this respondent had actively participated in all the cultural, social and educational activities in the school and also in the college. The averment that this respondent did not like the petitioner talking to his parents etc. is only a figment of his imagination. This respondent knows the elementary principles of family life and how to behave towards family members. There was no occasion for the petitioner to advice this respondent as to how she should behave towards his parents. Although her mother-in-law had quite often found fault with this respondent even on silly matters and used to chastise her, she respected her and did not react to her comments. The only person who had real affection, love and regard for this respondent was her father-in-law. He is an engineer and had

worked as the head of a premier institution in Kerala for several decades. It is too much to say that this respondent had entertained a hostile animus towards such a venerable gentleman. It is true that the parents of the petitioner had called on this respondent on 27.12.1991, 17.1.1992 and 26.2.1992 on their way to Chavara. But the petitioner deliberately avoided paying any visit on her after she had left the matrimonial home for confinement. After the child was born he came on 2.3.1992 and on 7.3.1992 with some of his friends. He had attended the naming ceremony of the child. But it is false to state that there was an altercation between them regarding the custody of the child on that day. After the child was born there was visible change in the attitude of the petitioner and his mother towards this respondent. Although the petitioner's parents made occasional visits to Alappuzha, neither the petitioner nor his mother wanted to take back this respondent and the new-born baby to the matrimonial home. Though this respondent had made repeated requests to the petitioner and his mother to take her back to the matrimonial

home, they did not pay any heed to the same. The rice-feeding ceremony of the child was performed at Chottanikkara temple on 6.9.1992. The petitioner and his parents were informed of the said ceremony in advance. This respondent had on 31.8.1992 written a letter also to the petitioner reminding him of the importance of the function and requesting his personal presence on the occasion. This respondent's father had extended a personal invitation to the petitioner when he met him at his office on 2.9.1992. Though the petitioner was physically present at his house on that day, he deliberately refused to come and bless the child on that occasion. But his parents had come and attended the function. This respondent genuinely believes that the petitioner did not attend the function as he might have been prevented by his mother from participating in the function. She disallowed any type of association of the petitioner with the child. From the conduct of the petitioner and his mother it was evident that they had no intention to take back this respondent to her matrimonial home even in the distant future. Therefore, on 22.9.1992 this

respondent's brother, who is an engineer by profession, went to Ernakulam and met the petitioner and his father and requested them to facilitate the return of this respondent and her daughter to her husband's house. Since his attempt did not fructify, on 28.9.1992 this respondent along with her parents and brother went to the petitioner's residence at Ernakulam. But the petitioner did not permit this respondent to stay with him. As there was torrential rain attended by thunder and lightning on that day, this respondent requested the petitioner to permit her at-least to spend the night in his house along with the child. He, however, turned a deaf ear to her request and she was forced to leave the house and go back to Alappuzha along with her parents. She was thus virtually turned out of the petitioner's house at 9.30 p.m. in the night. As there was heavy rain on the way, she could reach home only by 12 midnight. The inhuman conduct on the part of the petitioner had caused excruciating mental pain to this respondent. This respondent, however, admits that for a short period from 8.11.1992 till 28.2.1993 this respondent and her daughter were permitted to reside in the

petitioner's house at Ernakulam. However, that was the worst period in the entire married life of this respondent. During this period the petitioner's mother did not allow any sort of association of this respondent and her daughter with the petitioner. This respondent was given a room in the ground floor to sleep with her daughter and her mother-in-law was also sleeping in the same room. This respondent was asked by her mother-in-law that she should not go to the petitioner's room on the first floor or talk to him. Every night the mother-in-law kept a constant vigil on this respondent to make sure that she did not slip out of the room and meet her husband on the first floor. This respondent submits that she was confined to that room in the ground floor and on account of that she suffered severe mental pain and agony. On 16.1.1993 this respondent and her child were taken to Alappuzha by her parents-in-law as this respondent wanted to attend the marriage of her mother's sister's daughter at Thiruvananthapuram on 18.1.1993. After the marriage this respondent went back to her husband's house on 25.1.1993 and she stayed there till 9.2.1993 on which day

she came to Alappuzha along with the petitioner and his parents to attend the birthday celebrations of her father. Thereafter on 11.2.1993 this respondent returned to Ernakulam after attending her husband's grandfather's birthday celebrations at Chavara. She had returned to her matrimonial home voluntarily and not on the basis of any persuasion of her parents-in-law. The first birthday of this respondent's daughter was celebrated at Ernakulam on 19.2.1993. Thereafter this respondent lived in her matrimonial home only till 28.2.1993 on which day she was taken back to her house at Alappuzha by the parents of the petitioner. The petitioner and his mother wanted this respondent to leave the matrimonial home and accordingly she was forced to go to her parental home much against her will. Thereafter several attempts were made by this respondent to return to the matrimonial home and resume co-habitation. But her attempts did not succeed on account of the intransigent attitude of the petitioner and his mother. On 21.3.1999 this respondent again went to the petitioner's house with the child with the intention to stay there permanently. After leaving this

respondent and the child in the house, her parents went to the residence of Mr. M.N.Sukumaran Nair, a senior advocate of the High Court and a close associate and well-wisher of the respondent's family. As desired by his mother, the petitioner telephoned Mr.M.N.Sukumaran Nair and contacted the respondent's father over the phone. The petitioner wanted him to go to his residence immediately and take back the respondent and the child from his house. This respondent's parents immediately came there. In their presence this respondent and the child were literally necked out of the matrimonial home by the petitioner in front of his parents. This caused severe mental pain, agony and distress to this respondent. However, she suffered the ill-treatment meted out to her by the petitioner and his mother in the fervent hope that time would change their attitude towards this respondent. On 16.5.1993 the petitioner's father came alone to Alappuzha and took this respondent and the child to North Parur to attend the marriage of this respondent's mother-in-law's sister's daughter scheduled to be held on the 17th. After the marriage this

respondent and the child were taken to Ernakulam by the petitioner and his parents. In the evening news came that the petitioner's father's uncle Narayana Pillai had passed away at Thiruvananthapuram. The petitioner's parents wanted to attend the funeral and they were getting ready to leave for Thiruvananthapuram on the next day. Thereupon this respondent virtually cringed with the petitioner and his mother to permit her and her child to live in the matrimonial home atleast for some days. The petitioner and his mother were adamant and they informed this respondent that she would not be permitted to live in their house. The petitioner had even threatened this respondent with physical injury if she refused to leave the matrimonial home the very next day along with his parents. In the presence of his parents he uttered that in case she stayed back, he would slap her face and make it out of shape. The exact words spoken by him was the following:-

> "ഇവിടെ താമസിച്ചാൽ അടിച്ചു മുഖത്തിന്റെ shape മാറ്റും"

Thus, the attempt made by this respondent to resume co-habitation failed and she had to return to Alappuzha along with

the petitioner's parents on 18.5.1993. However, this respondent sent a letter to her mother-in-law owning the entire responsibility for the incident which took place on 17.5.1993 and requesting them to permit her to return to the matrimonial home. This respondent had passed M.A. Degree in 1991 just before her marriage. She was desirous of gong for further studies. It was because of her marriage that she dropped the idea of further studies in the hope that she could become a good housewife. As the married life was not successful as originally not expected, this respondent wanted to resume her studies. Accordingly, on 6.10.1994 she got herself admitted to the Journalism Course at the Press Academy, Kakkanad, Ernakulam, She passed the course on 8.1.1996 in First Class securing third rank in the examination. During the entire period of her study in the Press Academy, she was staying in the ladies' hostel as she was absolutely sure that the petitioner and his mother would not permit her to live permanently at their residence. Her parents-in-law visited her only once while she was in the hostel. But she used to visit them occasionally to pay her respect and regards

for them. By the end of 1995, as part of th Journalism Course this respondent had to undergo a day's training at the Malayala Manorama Office at Panampilly Nagar which is situated close to the petitioner's house. On that day this respondent went to her matrimonial home and took food along with her parents-in-law. Part of the training was at night and, therefore, after the work this respondent thought that her mother-in-law would permit her to sleep in the matrimonial home during the night. But her mother-in-law did not allow this respondent to sleep there and so this respondent had to go and spend the night at her friend's house. There were many such incidents of cruel treatment extended by the petitioner and his mother to this respondent. In spite of that this respondent bears no ill-will towards the petitioner or his mother. This respondent has only love and affection for the entire family. This respondent has always been and still is ready and willing to return to her matrimonial home and resume co-habitation with the petitioner and discharge all her marital obligations. This respondent is not guilty of cruelty or desertion as stated in the petition. She has not left the

matrimonial home on 28.2.1993 with the intention of bringing the co-habitation to an end permanently as alleged by the petitioner. She has not entertained any animus deserendi when the petitioner's parents took this respondent to her house on 28.2.1993 on their way to Chavara. The conduct of this respondent subsequent to 28.2.1993 will reveal that she had no intention to terminate the marital relationship with the petitioner. The parents of the petitioner also did not persuade this respondent to return to her matrimonial home as alleged in the petition. This was because they were aware that the petitioner would not permit this respondent to live in his house. Therefore, the attempt made by the petitioner and his parents to re-install this respondent in her matrimonial home is only a cock and bull story. On 16.5.1993 this respondent was taken to North Parur by her father-in-law for the marriage of the petitioner's cousin. But on the next day she was driven out of her matrimonial home by the petitioner. On 4.7.1993 this respondent, her sister and father went to the petitioner's residence. But on seeing this respondent the petitioner left his house immediately in his car. It

is not correct to say that this respondent's parents had brought her to the matrimonial home on 19.9.1993. On that day neither this respondent nor her parents had gone to the petitioner's house. On the contrary, on 19.9.1993 the petitioner's grandparents, Govinda Kurup alias Chellappa Kurup and his wife came to this respondent's house in the morning along with the petitioner's father on their way to Ernakulam from Chavara. The petitioner's grandfather had gone to Ernakulam on that day in connection with an eye-operation and this respondent did not accompany them on that day. The parents of this respondent took the petitioner's daughter to Sahrudaya Hospital, Alappuzha for triple injunction. The Hospital records would reveal the falsity of the claim made by the petitioner. On 1.10.1993 also this respondent did not go to the petitioner's residence. On that day the petitioner's mother had sent some dresses to the petitioner's daughter through Mrs. Vidyavathi who is a retired teacher and a close neighbour of this respondent. The averment in the petition that this respondent was indifferent towards the petitioner and had treated him with cruelty is palpably false. It is also not true

to say that this respondent had prevented the petitioner from having any access to the child. In fact, it was the petitioner's mother who was not permitting him to have any access to the child. Whenever she saw the petitioner carrying his daughter, she would immediately snatch the girl from his hands and go away. The allegation that this respondent had collected all her ornaments from the petitioner's house while she was leaving the matrimonial home is utterly false. The petitioner's father who is honest and a man of integrity had assured this respondent's father that he would either return the entire gold ornaments or pay to this respondent Rs.2 lakhs as the value of the gold ornaments. This respondent did not initiate any proceedings for recovery of ornaments or for the enforcement of her other legal rights only because she thought that any such unilateral on her part would only further estrange the marital relationship between the parties. The case of the petitioner that this respondent refused to accept money from the petitioner for the maintenance of his daughter is devoid of any truth. The petitioner's father had on two or three occasions offered money to this respondent

which she had gladly accepted. The case of the petitioner that he waited till March 1996 for the return of this respondent to her matrimonial home as requested by her parents is not true. Similarly, she had never declared that she would make the life of the petitioner miserable. It is true that on two occasions certain well-wishers of the family attempted to effect a re-union between the parties. But their attempts did not fructify due to the uncompromising attitude of the petitioner. It is not true that this respondent did not go to the matrimonial home after 28.2.1993 for resumption of co-habitation with the petitioner. She had made innumerable attempts to do so, but on all those occasions she was prevented by the petitioner and his mother from resuming co-habitation. She did not leave the matrimonial home on 28.2.1993 on her own accord. It is false to say that from February 1993 till the date of presentation of this petition i.e. 2.6.1999 there had been total repudiation of the marital obligations by this respondent. At the trial of this case this respondent will be able to prove by oral and documentary evidence that this respondent did not desert the petitioner and

that it was the petitioner who was guilty of constructive desertion and cruelty. Until 16.10.1996 this respondent had been frequently visiting the petitioner and his parents. On 16.10.1996 this respondent had gone to her matrimonial home and had lodged with her parents in law. On 18.12.1996 at the behest of the petitioner an advocate who later acted as a mediator telephoned this respondent's father and informed him that the petitioner wanted dissolution of the marriage. Since the petitioner had taken such a decision, as advised by her parents this respondent did not go to her matrimonial home after 18.12.1996. This respondent is at present studying for Law in the Cochin University. This respondent's father is a lawyer and, therefore, she has got all facilities to set up practice as a lawyer along with her father. This petition is devoid of any bona fides. The brain behind the filing of this petition is the petitioner's mother. The petitioner is guilty of constructive desertion and cruelty. This respondent is not guilty of any of the matrimonial offences alleged against her. The O.P. may, therefore, be dismissed with costs to the respondent.

THE TRIAL

4. On the side of the petitioner/husband five witnesses were examined as PWs.1 to 5 and one document was marked as Ext.A1. On the side of the respondent/wife two witnesses were examined as RWs.1 and 2 and no documentary evidence was adduced.

5. The Family Court, as per order dt. 24.11.2001, disallowed divorce on the ground of desertion, but granted a decree for divorce on the ground of cruelty. It is the said decree which is assailed in this appeal by the wife. During the course of arguments the learned counsel for the respondent/husband submitted that he is entitled to canvas the correctness of the findings of the Family Court disallowing divorce on the ground of desertion.

6. The points which arise for determination in this appeal are the following:-

A) Whether the impugned order passed by the Family Court granting a decree of divorce to the husband on the ground of cruelty by the wife is sustainable or not?

B) Whether in the appeal filed by the wife challenging the decree of divorce on the ground of cruelty, the

husband can canvass the correctness of the finding recorded by the Family Court disallowing a decree of divorce on the ground of desertion?

C) If the husband is entitled to canvas the correctness of the finding regarding desertion, whether the respondent/husband has proved desertion for the purpose of obtaining a decree of divorce?

D) Whether the second marriage allegedly contracted by the husband within two days of the impugned decree stands in the way of a consideration of this appeal on the merits ?

E) To what reliefs and costs are the parties entitled ?

Point No.B.

7. Adv. Smt. Elizabeth Mathai Idicula, the learned counsel appearing for the appellant/wife raised a preliminary objection to the effect that the respondent is not entitled to question the impugned order so far as it relates to desertion since no decree for divorce was granted to the husband on the ground of desertion. According to the learned counsel, the refusal to grant a decree for divorce on the ground of desertion is a decree against the appellant/husband who is not entitled to challenge the finding regarding desertion without filing a memorandum of cross-objection in view of Order 41 Rule 22 C.P.C. Elaborating

the said point the learned counsel argued that the respondent/husband is not entitled to challenge the decree disallowing divorce on the ground of desertion as he has not preferred either a memorandum of cross-objection or a separate appeal against that part of the decree and the decree which has been granted by the Family Court is only one for divorce on the ground of cruelty alone. The counsel for the appellant/wife relied on the decisions reported in ***Choudhary Sahu v. State of Bihar - 1982(1) SCC 232 and Leena Mathew v. Kerala Shipping Corporation - 1988(1) KLT 212.***

8. We are not inclined to sustain the preliminary objection raised by the appellant/wife to the effect that the respondent/husband cannot assail the finding with regard to desertion. Whichever may be the grounds of divorce, the decree that is passed is only one decree, whether it be on the ground of cruelty, desertion or any of the other grounds. It is analogous to a claim for eviction on various grounds available to a landlord. If the landlord seeks eviction on three grounds and a decree for eviction is granted only on one ground, it cannot be said that

there is no decree for eviction. May be, the decree for eviction is granted on one ground only. Hence, with regard to the other two grounds on which no eviction is granted, the landlord can in a tenant's appeal not only support the decree but also assail the findings disallowing eviction on the remaining two grounds even without a cross-objection. The scope of order 41 R. 22 C.P.C. both before the 1976 amendment of the C.P.C. and after the said amendment has been considered by the Apex Court in ***Raveendar Kumar Sharma v. State of Assam - 1999 (7) SCC 435***. It was inat alia observed that before the 1976 amendment it was open to the respondent/defendant who had not taken any cross-objection to the partial decree passed against him, to urge, in opposition to the appeal of the plaintiff, a contention which if accepted by the trial court would have resulted in the total dismissal of the suit. It has further been held that the filing of cross-objection after the 1976 amendment is purely optional and not mandatory. Such being the position, the preliminary objection with regard to the husband's contention that he is entitled to canvass the correctness of the finding

recorded by the Family Court disallowing a decree of divorce on the ground of desertion even without a cross-objection is without any force and is accordingly overruled. This point is accordingly answered against the respondent wife and in favour of the appellant/husband.

POINT NO. A - CRUELTY- Husband's arguments in appeal

9. Adv. Sri. P. Radhakrishnan, the learned counsel appearing for the respondent/husband made the following submissions before us in support of the husband's claim or divorce on the ground of cruelty:-

The pleadings in support of the husband's claim are to be found from paragraph 2 onwards of the original petition. It has been definitely alleged that the wife was behaving very strangely towards her husband and his parents and she exhibited anger and annoyance towards them. Again in paragraph 3 of the O.P. it has been alleged that the wife continued exhibiting cold behaviour and told her husband that she had dislike for him and his parents. She had altogether made 11 visits to her parental home at Alappuzha totaling to 57

days within six months of the marriage. This displayed her disinclination to stay in the matrimonial home and her eagerness to go to her own house. 8-6-1991 was the date of marriage which was solemnized at Alappuzha. From that day onwards she started cohabiting with the husband at Ernakulam. On 24-7-1991 she went to her house at Alappuzha and stayed there for 11 days till 4-8-1991. Even though on 26-7-1991 the husband and his parents went to Alappuzha to bring her back, she refused to return to the matrimonial home. On 4-8-1991 she returned to her matrimonial home. On 30-8-1991, the wife went again to Alappuzha for 21 days till 20-09-1991 on which day she was brought back to her matrimonial home. On 2-10-1991 she again went to her parental home and returned on the next day. Again from 5-11-1991 to 24-11-1991 she went to Alappuzha and stayed in her parental home for 20 days. She returned to her matrimonial home on 24-11-1991. Again on 12-12-1991 her parents came to Ernakulam and took her to Alappuzha for delivery. The husband and his parents visited Suchitra at Alappuzha on three days namely 27-12-1991 and 17-

2-1992 and 26-2-1992. Gouri a female child was born to the spouses on 2-3-1992. On 6-9-1992, she returned to her matrimonial home after delivery. On 16-1-1993 she went again to Alappuzha to attend a marriage. She returned to the matrimonial home on 25-1-1993. On 9-2-1993 she again went to her parental home to attend a birthday and returned to Ernakulam on 11-2-1993. On 28-2-1993 she peremptorily left her matrimonial home along with her daughter without the consent of her husband. Even though, subsequently on 16-5-1993, 4-7-1993, 19-9-1993 and 31-10-1993 her parents had brought her to her matrimonial home, she returned to Alappuzha on the very same dates. The husband expected her to return to her matrimonial home but in vain. It is not necessary for the petitioner in a matrimonial proceedings to plead specific instances. It would be sufficient if a general plea is made in the petition. Order 6 Rule 2 C.P.C. also indicates that it is not necessary to plead evidence but only material facts. Even if there is no pleading or if the pleadings are vague or non-specific the court has to consider the totality of the materials. If the

parties went to trial knowing fully well what they had to prove, no objection can be taken regarding the absence of pleadings. ***Vide Sardul Singh v. Pritam Singh and Others - 1999 (3) SCC 522, Indian Oil corporation v. Municipal corporation, Jullundhar - 1993 (1) SCC 333 and Kali Prasad Agarwalla v. M/s. Bharat Coking Coal Limited and Others - 1989 (Supp) 1 SCC 628.*** The husband has clearly averred the ground of desertion and cruelty. It is discernible from the averments in paragraph 5 of the petition that Suchitra showed over possessiveness over her daughter and repugnance to any physical contact which the husband had with the baby girl. Again it is averred that the wife suffered insufferable temperament and unrelenting anger towards the husband for no reason. Again paragraph 8 of the petition it is averred that the wife never changed her attitude towards her husband even after seven months of delivery. 10. She never attended to any work in the family. She always seemed to be brooding over imaginative issues and would pick up quarrels with the petitioner for no reason. Anger was a trait in her character. She was

basically a career oriented person. She did not want children. There was a total repudiation of the marital obligations. Matrimony becomes an empty shell without co-habitation. According to Suchitra, her parents took her to the matrimonial house and after leaving suchitra and the child there they went to the house of Adv. Sri. M.N.Sukumaran Nair. She would say that P.W.1 called Sri. M.N. Sukumaran Nair over the phone and asked his parents-in-law to take Suchitra to Alappuzha. But she has admitted that she went to the matrimonial home without informing her husband in advance. "Cruelty" is not defined under the Hindu Marriage Act. It is something which can be inferred. A number of acts can constitute a cumulative act of cruelty which may be the result of physical or mental ill-treatment. The court has to consider the particular spouse and not any hypothetical or ideal spouses ***(See Shobha Rani v. Madhukar Reddi - AIR 1988 SC 121).*** Cruelty is a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other.

An inference of cruelty can be drawn from the attending facts and the circumstance taken cumulatively. ***(Vide Parven Mehta v. Inderjit Mehta - 2002 (5) SCC 706).*** No explanation has been offered by Suchitra for leaving the matrimonial home on 28-2-1993. On 19-2-1993 the child's birthday was celebrated at the matrimonial home with all pomp and pageantry. If so, what was the driving force which compelled her to leave the matrimonial home within 9 days of the child's birthday ? Whenever she wanted to go to Alappuzha and either her husband or her in-laws dissuaded her from going, she used to show tantrums. RW. 2, father of Suchitra has admitted at page 10 of his deposition that until 28-2-1993 there was no objection raised from the side of the husband or his people. If so, the force which impelled her to leave the matrimonial home eludes. The pivotal cause for her matrimonial misfortune is attributed by Suchitra to her mother-in-law (PW4). But what we find is that even on 28-1-1994 Suchitra has only glowing tributes to be paid to her mother-in-law on Ext. A1 letter sent by her. If her mother-in-law was over-possessive as Suchitra would have it, she would

not have taken the initiative to persuade her to take a rented building and stay apart. Suchitra left the matrimonial home on 28-2-1993. Thereafter she did not return for good to her matrimonial home. The husband waited for days and months and years until at last on 26-11-2001 i.e. two days after the impugned decree he married again. The occasional visits of the wife at the matrimonial home thereafter were not to resume cohabitation or to return to the matrimonial home permanently.

APPRECIATION OF ORAL EVIDENCE

10. **A)** P.W.1 (Anil Krishnan) is the husband. A reading of his testimony will go to show that he does not remember many of the dates and events. According to him, his wife Suchitra @ Chithra was cold and indifferent after marriage, that her behavioural pattern was arrogant and self centered that she was very indifferent towards his parents, that she used to spend the day confining herself to her room itself watching the T.V. or reading something, that she used to get up in the morning at 10 a.m. after he left for office at 9.30 a.m. that he was Marketing Executive in the Premier Tyres at the time of his marriage, later,

he joined Birla Tyres and sometime in March 1992 he resigned his job and started his own business, that his wife was behaving as if she was forced to marry against her wish. He has no case in the pleadings that his wife was a loner in her matrimonial home staying confined to her room reading books and watching the T.V. or that she never got up before he left for office. It was only at the stage of evidence that he developed such a case. It is well settled that no amount of evidence can be looked into to find a case for which there has been absolutely no foundation in the pleadings. ***(Vide AIR 1930 P.C. 57 - Siddik Mohammed Shah v. Mt. Saran and others, Elizabeth v. Saramma - 1984 K.L.T. 606, Trojan & Co., v. Nagappa - AIR 1953 SC 235 , Bhagwadi Prasad v. Chandramaul - AIR 1966 SC 735).*** P.W.1 admitted that after 28-2-1993, even though his wife had not stayed in his house, she used to come there during day time, that he has not sent any money towards the maintenance of his wife or child, that his parents used to offer maintenance to child and his wife refused to receive the same. He has no case that he offered any maintenance to his wife or

child. At page 26 of of his deposition he would say that his wife was not on good terms with his mother. In the same breath he would say that they were maintaining good relationship. He deposed that his mother sleeps on the ground floor whereas his bedroom is on the first floor. Regarding the attempt made for re-conciliation, he deposed before court that a joint petition for divorce was got prepared through retired District Judge Sri. Sukumaran who was one of the mediators but she backed out. This indicates that it was P.W.1 who wanted a divorce and he blames her for not agreeing to the same. The fact that P.W.1 was planning to marry another woman after getting a divorce from Suchitra becomes more clear from his subsequent conduct of marrying another lady within two days of the impugned decree. We will have occasion to refer to this aspect later.

10. **B)** P.W.2 (G.P. Pillai) is the father of P.W.1. He is a very respectable person even according to Suchitra and was aged 65 years while giving evidence before court on 18-1-2001. He was working as Manager of Premier Tyres and he retired from service 10 years prior to his examination in Court.

Notwithstanding his respectability and dignified nature, being the father of P.W.1 he could only tow the line of his son. Even while supporting his son P.W.1, he was not inclined to sketch his daughter-in-law as intransigent as his wife or son would attempt to do. The admission made by P.W.4 (Gouri Pillai) at page 10 of her deposition that her daughter-in-law was always home sick

"ചിത്ര എപ്പോഴും "home sick" ആയിരുന്നു" explains the yearning, if at all shown Suchitra, to go to her parental home during the first few months of marriage. Hence the statement of P.W.2 that Suchitra always wanted to go to her parents at Alappuzha and used to show tantrums in this behalf can only be a manifestation of her homesickness consequent on her transplantation to another family. P.W.2 who stated that it was from the side of Suchitra that the talk of divorce first sprang up, quoted Suchitra's own words as follows:

> "അനിലിന് divorce ആവശ്യമാണെങ്കിൽ let him have it".

If these were the words spoken by Suchitra then it was Anil Krishnan who wanted a divorce. P.W.2 stated that his wife's

sister and her husband besides their common friends one K.M. Nair and retired District Judge Sri. Sukumaran were the mediators . According to P.W.2 before 1996, the mediators were trying for a re-union and after 1996 they were talking for a divorce and that it was eventually decided to have divorce by filing a joint petition. He also confessed that it was the girl's side who did not agree for divorce during the last meeting. At page 16 of his deposition, P.W.2 has admitted that Suchitra had come to her matrimonial home along with her child several times from 1992 till the filing of the petition for divorce. This indicates that Suchitra had not permanently snapped her relations with Anil Krishnan or his family. After the re-conciliation talks, P.W.2 and his wife had visited Suchitra in her hostel two or three times. She was at that time studying for Journalism which she subsequently passed with flying colours by securing a rank. Six months prior to the petition he had gone and met Suchitra in the hostel to talk to her about a proposal for divorce put forward by retired District Judge Sri. Sukumaran. P.W.2 confessed that she was not agreeable for the same and she told that she was not

aware of any proposal for filing a joint petition for divorce. This also indicates that it was Anil Krishnan's side who were eagerly wanting a divorce. At page 7 of his deposition, P.W.2 admitted that even though from the conciliation talks he could make out that Suchitra's parents were agreeable for a divorce she was not and that was why P.W.2 went and met her in the hostel. Again at page 8 of his deposition, P.W.2 deposed that the mediation talks started with a demand for 2 lakhs of rupees payable for appropriating the ornaments of Suchitra.

10. **C)**. P.W.3 (Ammini Amma) aged 78 years is a retired Principal of Kerala Varma College, Thrissur. She was the President of the Ernakulam Women's Association of which P.w.4 (Gouri Pillai) was also a member. She was examined to say that she had never seen Gouri Pillai misbehaving with her daughter-in-law. According to P.w.3 Gouri Pillai and Suchitra were moving together as if they were mother and daughter. She, however, confessed that she cannot say how Gouri Pillai behaves in her own house. She also admitted that she came to court in the company of Gouri Pillai.

`10. **D).** P.W.4 (Gouri Pillai) who is the mother of P.w.1 and the wife of P.W.2 is alleged to be the destructive factor which is said to have marred the matrimonial prospects of Anil Krishnan and Suchitra. According to P.w.4 Suchitra used to go home once in a week and she was taken either by her parents or by P.W.2 and P.W.4. She would also corroborate the version of her son P.W.1 to say that Suchitra did not show any interest in the household affairs and she was keeping confined to the upstairs either reading books or watching the T.V. and would get up and come down only after 9.30 a.m. when P.W.1 would have left for his office. But P.W.4 confessed that there were servants in the house both in the kitchen as well as for doing the external jobs. If in such a house, the daughter-in-law did not go to the kitchen for helping the cooking, one fails to understand as to how could that amount to matrimonial cruelty. The admission by P.W.3 that her daughter-in-law who was called Suchitra was always “home sick” explains the longing exhibited by Suchitra go to her parental home during the early months of marriage. P.w.4 who stuck to her son's version that

on 28-2-1993 Suchitra left her matrimonial home on her own accord, admitted that she does not remember as to who accompanied Suchitra on 28-2-1993 (See P.W.4 page 17). Her admission at page 19 of her deposition to the effect that on 17-5-1993 her sister's daughter was getting married at Parur and on that day her husband P.W.2 went to Alappuzha to fetch Suchitra and Anil Krishnan attended the marriage by coming in the company of P.W.2 and Suchitra will show that Suchitra had not bid farewell to her matrimonial home once and for all. The evidence of P.W.4 at page 19 further shows that after the marriage at North Parur Suchitra had gone with them to Ernakulam and by that time news was conveyed about the sad demise of P.W.2's uncle at Thiruvananthapuram and P.W.4 proceeded to Thiruvananthapuram and on their way Suchitra and her child were taken and dropped at Alappuzha. At page 25 of the deposition of P.W.4 there is a noting by the Family court Judge that since P.W.4 was standing in the witness box from 10 a.m. to 12.50 a.m. continuously for about three hours , the Judge asked her to sit down if she so wished whereupon the counsel

appearing for Suchitra is stated to have made a comment that there is nothing wrong in keeping the witness standing as she had left a woman and her child in the lurch. To the said comment the Family Court Judge has noted in the deposition of P.W.4 that the above attitude and comments are deprecated. We do not know whether the above indiscretion shown by the counsel for which the client is no way responsible had prejudiced the mind of the trial judge. At page 26 of her deposition P.W.4 stated that she had not seen her granddaughter for about 3-4 years and that she does not know the class in which the girl studies or the name of her school.

10.**D)**. P.W.5 (Renu Mohandas) is a friend of P.W.4 from 1984 onwards. This witness was examined to prove that when once she was in the house of P.W.4 the baby cried and when P.W.4 took the baby, Suchitra suddenly came and snatched the baby from the hands of P.W.4 and this appeared to be very strange to P.W.5. P.W.5 confessed that she is a good friend of P.W.4 and she had come to Court along with P.W.4 and during the journey P.W.4 had asked her to tell the court about the above

episode. P.W.5 confessed that Anil Krishnan had told her that Suchitra was home sick. P.W.5 who deposed that Suchitra was not friendly with her admitted that Suchitra had sent her a letter inviting her for her daughter's birthday.

10.**E**) R.W.1 (Suchitra) is the wife of P.W.1. She deposed in terms of the defence set up by her and there is a ring of truth and candour in her testimony.

10. **F).** R.W.2 (Radhakrishnan Nair) is the father of Suchitra. A reading of his testimony will show that he is a very dignified and candid person who had not shown any special concern or anxiety to magnify every syllable of his daughters post nuptial miseries.

CRUELTY - JUDICIAL CONCLUSION

11. We are afraid that we find ourselves unable to agree with the submissions made on behalf of the husband. The parties are Hindus belonging to the Nair community. The marriage between Anil Krishnan and Suchitra was solemnised according to their customary rites in the Sree Rama Mandir at

Alappuzha on 8-6-1991. Anil Krishnan examined as P.W.1 was residing at “Gouri” in Panampalli Nagar, Ernakulam which was his parental home. Anil Krishnan is the only son of his parents (PW2 and P.W.4) and he has no brother or sister. He is an M.B.A. graduate. Suchitra examined as R.W.1 belongs to Alappuzha which is about 62 kilometer to the south of Ernakulam. Suchitra has a sister and a brother and at the time of her marriage Suchitra was an M.A. in English.

12. The husband has not pleaded the alleged visit of Suchitra to Alappuzha on 1-6-1991 and 6-7-1991. Therefore, it is not open to Anil Krishnan to come out with a case based on the aforementioned two dates. With regard to the period from 24-7-1991 to 4-8-1991 during which the wife is alleged to have left the matrimonial home and remained in her parent home, Suchitra has answered at page 3 of her objection that it was not on her own accord that she went to Alappuzha on 24-7-1991. That day was Anil Krishnan's father's birthday. P.W.2 is the father of Anil Krishnan. The entire family was celebrating the birthday at Chavara and for this purpose all of them went to Chavara on the

23rd evening. After the birthday celebration, on her way back, Suchitra got down at Alappuzha. This was with the permission of Anil Krishnan. She felt exhausted and was advised by Anil Krishnan himself to stay back at Alappuzha. On 25-7-1991, she was taken to a lady doctor for a medical check up. After examining her, the doctor announced that she was pregnant. The news was conveyed to Anil Krishnan who along with his parents came in an excited mood to Alappuzha on the next day. Since on 1-8-1991 it was the 90th birthday of Suchitra's paternal grandmother and since Suchitra wanted to participate for the birthday, neither her husband nor her in-laws asked her to return to Ernakulam. The ensuing days were Friday and Saturday which were not astrologically auspicious for a pregnant woman to return to her matrimonial home. She was taken to Ernakulam by her father and sister on 4-8-1991 by train and Anil Krishnan had come to Ernakulam South Railway Station to take them to his house. The above version of Suchitra has been practically admitted by Anil Krishnan when examined as P.W.1 at pages 15 and 17 of his deposition. Hence, it was uncharitable on the

part of Anil Krishnan to allege that his wife had intentionally kept herself away from the matrimonial home.

13. The allegation made by Anil Krishnan regarding his wife's visit of her parental home from 30-8-1991 to 20-9-1991 has been replied in paragraph 6 of her objection. According to Suchitra she did not insist on going to Alappuzha on 30-8-1991. 2-9-1991 was her 23rd birthday. It was her husband who took her to Alappuzha for the said purpose on 30-8-1991. He did not, however, turn up for the birthday and it was not deliberate. But his parents had come to Alappuzha and had greeted her and had given her birthday presents. On 20-9-1991 she was taken to Ernakulam by her parents. While examined as R.W.1 Suchitra deposed that it was her husband who had told her that he would be going to Madras for 21 days and therefore, it was he who asked her to remain at Alappuzha during his absence. It was his parents who later took her from Alappuzha to Ernakulam.

14. Regarding the further visit on 2-10-1991, in paragraph 6 of the objections, Suchitra has given sufficient explanation. Her father-in-law (P.W.2) is a native of Chavara.

He used to go over Chavara frequently to meet his aged parents. On 2-10-1991 when they went to Chavara, they wanted their daughter-in-law Suchitra also to accompany them. She obliged them and when they returned to Ernakulam on 3-10-1991, she also accompanied them to Ernakulam. Suchitra has denied her husband's allegation that it was her parents who took her to Ernakulam on 3-10-1991.

15. The period from 5-11-1991 to 24-11-1991 is the next period of absence of the wife from the matrimonial home. 5-11-1991 was Deepavali day. As Suchitra was pregnant, her parents paid her a visit at Ernakulam with various items of sweets. It was part of the custom prevailing in their community. Suchitra was informed that her husband was leaving for Madras on the next day and therefore, if she wanted, she could also go to Allappuzha along with her parents. Suchitra also wanted to attend her friend's marriage on 8-11-1991. Therefore, as permitted by Anil Krishnan's parents on 5-11-1991, she went to Alappuzha along with her parents. Therafter, Anil Krishnan's parents did not come to Alappuzha and hence there was no

occasion for them to persuade Suchitra to return to Ernakulam and resume co-habitation. Although Anil Krishnan's parents had come to Alappuzha on 19-11-1991, they advised her to stay back for one more day as Tuesday was not considered auspicious to undertake a journey. So she was taken to Ernakulam only on 24-11-1991. She has given corroboration to this version in her objections while examined as R.W.1 (Pages 33 to 36). Anil Krishnan examined as P.W.1 would say that he does not remember whether he had gone to Madras in November 1991 in connection with his business. It was on 12-12-1991 that Suchitra was taken for delivery. In paragraphs 9 to 11 of her objections Suchitra has stated that after delivery, in spite of repeated requests she was not taken back to her matrimonial home and that from 8-11-1992 to 28-2-1993 she was not allowed to stay there with the child. P.W.4, the mother of Anil Krishnan has admitted at page 27 of her deposition that after the rice - feeding ceremony of the baby on 6-9-1992 at Tripunithura all of them came to Ernakulam and they returned to Alappuzha . So, there was no possibility of Suchitra staying in the house of

P.W.4 from 6-9-1992 and leaving the matrimonial home on 25-10-1992.

16. The case of Anil Krishnan with regard to his wife's conduct in insisting to go to her parental home for the period from 8-11-1992 to 25-1-1993 and regarding her return to Alappuzha on 9-2-2003 has also been traversed at pages 11 and 12 of Suchitra's objections. It is the case of Suchitra that after the delivery she was brought back to her husband's house by her parents on 8-11-1992. Suchitra has stated that on 16-1-1993 she and her child were taken to Alappuzha by the parents of her husband as she had to attend the marriage of her mother's sister's daughter at Thiruvananthapuram on 18-1-1993. After the marriage, she came back to her matrimonial home on 25-1-1993 and resided there till 9-2-1993. She again went to her paternal home on 9-2-1993 to attend the birthday of her father and came back to the matrimonial home on 11-2-1993 after attending her husband's grandfather's birthday at Chavara and resided there with her husband till 28-2-1993. Likewise, Anil Krishnan's accusation that after delivery on 2-3-1992, Suchitra did not care

to return to her matrimonial home for a long time has been met by Suchitra by stating that in spite of repeated requests she was not brought back to her matrimonial home by her husband and his parents and that when she was taken there by her parents on 28-9-1992, she was not entertained by those in her matrimonial home and thereafter, on 8-11-1992, it was her parents who took her again to her matrimonial home.

17. There is no dispute that the parental home of Suchitra at Alappuzha is only less than 65 kms. from her matrimonial home at Panampally Nagar in Ernakulam. Admittedly, Alappuzha is on the way from Ernakulam to Chavara where the grandparents of Anil Krishnan parents are residing. Both the parties belonging to respectable Nair families. Suchitra was born and brought up at Alappuzha until her marriage. Hence, if she found it yearning to meet her parents frequently during the first few months of marriage, there was nothing abnormal or extraordinary in her behaviour. Some of her visits to Alappuzha were for very valid reasons and on some of the occasions it was none other than her own father-in-law and

mother-in-law who dropped her at Alappuzha while on their way to Chavara. Anil Krishnan has not even a whisper in the pleadings that the journeys undertaken by his wife to her own parental home which is not far off, were without his consent or against his wish or that he had warned her against frequently visiting her parents. Hence, the only possible conclusion is that all the visits made by Suchitra to her own house at Alappuzha was with the permission of her husband who was either expressly or tacitly allowing her to go to her paternal home. It is really surprising that Anil Krishnan has chosen to come out with specific dates to develop a contention that his wife was acting cruelly when she undertook those journeys to her paternal home. At no point of time until the presentation of O.P. in the year 1999 had Anil Krishnan taken exception to his wife visiting her own parents. Some amount of homesickness can be expected in a newly wedded bride and if she had evinced a desire to go to her parental home with a view to meet her parents who had brought her up right from childhood till her marriage, we fail to see any semblance of cruelty on the part of Suchitra on that

score. In fact, her own mother-in-law has admitted in unequivocal terms that Suchitra was always home sick. (See P.W. 4 - Page 10).

18. The allegations of cruelty in the O.P. are very vague, non-specific and general. Anil Krishnan has no past instance to quote when his wife even without his permission had defiantly left her matrimonial home and proceeded to her parental home causing great mental angusih to Anil Krishnan. All the allegations in this regard are general allegations casually made without reference to any particular incident or episode in their post marital life.

19. We are unable to accept the contention of Anil Krishnan that specific instances are matters of evidence which are not required to be pleaded and that the parties went to trial knowing fully well the case which they had to meet. When no specific instance amounting to cruelty has been pleaded, it is idle for Anil Krishnan to contend that his wife fully knew the case which she had to meet. Admittedly, the case before the Family Court was one for divorce filed under Sec. 13 (1) (ia) and 13 (1)

(ib)of the Hindu Marriage Act, 1955. Rule 7 of the Hindu Marriage (Kerala) Rules, 1963 reads as follows:

> ”7. **Contents of petition**. In addition to the particulars required to be given under order VII, rule (1) of the Code and Section 20(1) of the Act, every petition for judicial separation, nullity of marriage, or divorce shall contain the following particulars:-
>
> a) the place and the date of marriage, the names of the parties and their occupation, the place and address where the parties reside or last resided together within the jurisdiction of the Court;
>
> b) the name, status and domicile of the wife and husband before and after the marriage;
>
> c) whether there is living any issue of the marriage and if so, the name and date of birth or age of such issue, or all such issues;
>
> d) whether there have been any previous proceedings in any Court in India, with reference to the marriage, by or on behalf of either of the parties and if so, what proceedings and the result of such proceedings;
>
> e) the matrimonial offence or offences if any charged, set out in separate paragraphs with the time and place of the alleged commission;
>
> f) the property mentioned in Section 27 of the Act any; and
>
> g) the relief or reliefs prayed for:
>
> (2) If the petition is for restitution of conjugal rights, the date from which and the circumstances under

which the respondent withdrew from the society of the petitioner shall be stated in the petition.

(3) In cases where desertion and/or cruelty are alleged, the petitioner shall state the date and the circumstances under which the alleged desertion began and/or the specific acts of cruelty.

4) In every petition presented by a husband for divorce on the ground that his wife is living in adultery with any person or persons or for judicial separation on the ground that his wife has, after the solemnization of the marriage, had sexual intercourse with any person or persons other than him, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained.

(5) In every petition presented by a wife for divorce on the ground that her husband is living in adultery with any woman or women or for judicial separation on the ground that her husband has after the solemnization of the marriage had sexual intercourse with any person or persons other than her, the petitioner shall state the name, occupation and place of residence of such woman or women so far as they can be ascertained".

(Emphasis supplied)

Thus, Clause (e) of the above Rule enjoins the petitioner to state out in separate paragraphs the time and place of the alleged commission of the matrimonial offence or offences charged against the respondent spouse. Similarly Rule 7 (3)

mandates that in cases where desertion and/or cruelty are alleged, the petitioner shall state the date and the circumstances under which the alleged desertion began and/or the specific acts of cruelty. As mentioned earlier, there is no allegation of any specific act of cruelty in the petition. A generalised statement of the conduct of the respondent spouse without reference to any concrete instance of cruel behaviour cannot constitute cruelty.

20. Differences of opinion are bound to crop up even in the post nuptial life of the most ideal couple. Minor bickerings may exacerbate into simmering conflicts at times driving the marital partners to a stage of no return. No such thing happened in this case as a result of the frequent visits of the wife to her parental home so as to spell an irretrievable breakdown of the marriage. Marriage of Anil Krishnan and Suchitra was on 8-6-1991. Eversince the marriage she was in her matrimonial home at Ernakulam except during occasional visits made by her to her parental home. One cannot loose sight of the fact that after Anil Krishnan goes to office at 9.30 a.m.,

Suchitra has to spend the whole day in the company of two old people - P.W.2 and P.w.4. It is too early for a newly wed bride to think of geriatry in her husband's abode. Hence, if Suchitra had made frequent visits to her parental home during those days, there is nothing strange or abnormal about it. She was taken for delivery to Alappuzha on 12-12-1991. A female child was born to them on 2-3-1992. The rice-feeding ceremony of the baby girl was conducted at Chottanikkara on 6-9-1992 for which purpose alone Suchitra was taken to Ernaklulam. She was sent back to her parental home. Since there was no gesture forthcoming from the side of Anil Krishnan and his people to bring back Suchitra and the baby girl after she was taken for delivery , an attempt was made by Suchitra's brother to facilitate her return to the matrimonial home. This attempt was on 22-9-1992. Pursuant to the said attempt on 28-9-1992, Suchitra along with her parents and brother went to her matrimonial home. But Suchitra and her baby were not welcome guests at Panampally Nagar. In that night during thunder and heavy down pour she was virtually turned out of her

matrimonial home. Her entreaties to allow her to stay in the matrimonial home fell on deaf ears. Thereafter the only period during which Suchitra and her daughter were allowed to stay in the matrimonial home was from 8-11-1992 to 28-2-1993. This was the most bitter chapter in the post nuptial life of Suchitra. After she again stepped into her matrimonial home subsequent to childbirth she was virtually a prisoner of her mother-in-law who kept a constant surveillance over her daughter-in-law. The daughter -in-law was made to confine herself in the bedroom of the mother-in-law on the ground floor whereas her husband was occupying the bedroom on the upstairs. The suggestion put to P.W.4 that she was unable to bear the sharing of love and affection of her only son to his wife, though denied by P.W.4, looms large in this context. The mother-in-law saw to it that Suchitra does not meet her husband. It was unable to endure any longer the agony which she was suffering in silence that Suchitra finally bid farewell to her matrimonial home on 28-2-1993. She did not go alone. She was taken to Alappuzha by her parents-in-law. This in short, is the story of Suchitra. The

sojourns of the newly wedded bride to her parental home did not result in a ruptured marriage. After perusing the oral evidence of the parties and their witnesses, we have no hesitation to conclude that it was Anil Krishnan (P.W.1) and his mother Gouri Pillai (PW4) who have really paved the way for the irreconcilable separation of the marital partners. No doubt, in Ext.A1 letter written by Suchitra to her mother-in-law on 28-1-1994 she had paid rich encomiums and tributes to her mother-in-law. We are not inclined to accept the contention made on behalf of Anil Krishnan that if P.W.4 (the mother-in-law of Suchitra) was the real villain of the peace, Suchitra would not have given such admiration to her mother-in-law whom Suchitra would characterise as a proverbial mother-in-law determined to alienate the nuptial partners. Both the marital partners are from aristocratic Nair families and Suchitra cannot be expected to paint her mother-in-law black in letters written by her notwithstanding her misgivings and acrimony towards her mother-in-law. No sensible and diplomatic lady will dare to write ill of her mother-in-law even if she, in her heart of hearts ,

hates her mother-in-law. P.W.4 the mother-in-law of Suchitra was highly possessive towards her only son and she was virtually keeping Suchitra under house arrest. Whereever Suchitra went she was shadowed by her mother-in-law. It is an admitted fact that Suchitra's parents-in-law had accompanied her when she and her husband had gone to Bangalore for honeymoon. During Suchitra's last spell in her matrimonial home, P.W.4 saw to it that her daughter-in-law does not come upstairs and meet her husband in his bedroom. P.W.1 Anil Krishnan was virtually a “mother-pecked” husband who did not show the courage of calling his wife to his bedroom upstairs by defying the orders of his mother. We have no hesitation to conclude that the allegation of cruelty apart from being vague and non-specific, is too puerile for any court of law to take serious notice of. It was made by the husband with a view to secure a divorce somehow or other, so that he could translate into reality his intention of contracting another marriage after making unfounded allegations against Suchitra whom he did not love anymore. With due respect, we are unable to agree with

the conclusions reached by the learned Judge, Family Court to the effect that Suchitra was guilty of matrimonial cruelty entitling Anil Krishnan to a decree of divorce on that ground. On the contrary, it was Anil Krishnan, who was being uncharitable and cruel to his wife who was always loving and affectionate towards her husband and who wanted to be a faithful and dutiful wife for all times to come. We, therefore, disagree with the finding recorded by the court below that Anil Krishnan has substantiated his ground of cruelty so as to entitle him to a decree of divorce on that score . We set aside the said finding and hold that the ground of cruelty apart from being vague and non-specific has not been substantiated at all by Anil Krishnan so as to justify a decree of divorce on that ground.

POINT - C

DESERTION - Husband's contention in appeal.

21. Advocate Sri. P. Radhakrishnan, the learned counsel appearing for Anil Krishnan made the following submissions before us in support of his ground based on desertion:-

As per the explanation to Section 13(1)(ib) of Hindu

marriage Act, “desertion” means “the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wishes of such party and includes the “willful neglect” of the petitioner by the other party to the marriage. Thus, there need not even be a physical withdrawal from the society of the spouse by the other spouse. “Willful neglect” can be inferred if there is failure to discharge the matrimonial obligations. ***Vide 1961 All Eng. Reporter 129.*** The commentaries at page 701 in the 8th Edition of Hindu Law by Raghavachariyar will also show that abstention from an obvious marital duty or abandonment or willful disregard of the marital obligations may amount to “willful neglect” within the meaning of the above provision. Suchitra has no case that she was treated badly by her husband. On the contrary, she was the one who had created disharmony in the family. She was unable to get along with her husband's people and she eventually walked away from the matrimonial home. In her objections Suchitra would say that her mother-in-law disliked her having any type of relationship with her husband and would allege that

her mother-in-law was the brain behind the filing of this petition. A lady who has abstained from fulfilling her marital obligations towards her husband can certainly be said to be guilty of desertion.

DESERTION -Judicial Conclusion

22. We find ourselves unable to agree with the above submissions made on behalf of Anil Krishnan. Going by the credible testimony of Suchitra (RW1) on none of the occasions both prior to 28-2-1993 and after the said date had she expressed any disinclination to return to her matrimonial home. After every visit to her parental home, she had come back to her matrimonial home. The very fact that both of them begot a child in lawful wedlock will show that Suchitra cannot be held guilty of not performing her conjugal obligations. There is nothing on record to show that Suchitra disliked the company of her husband. On the contrary, the credible testimony of Suchitra examined as R.W.1 will go to show that it was her husband and mother-in-law who disliked the smooth sail of the matrimony

between Suchitra and Anil Krishnan. Far from Suchitra deserting her husband and her matrimonial home, it was Anil Krishnan who was trying to avoid her company. The subsequent event of Anil Krishnan contracting another marriage within two days of the impugned decree will fortify our conclusion that Suchitra had never deserted her husband so as to entitle Anil Krishnan to a decree of divorce on the ground of desertion. We, therefore, fully concur with the finding recorded by the Family Court that Anil Krishnan has not substantiated the ground of desertion so as to get a decree on that ground.

POINT D

23. One of the submissions made before us by the learned counsel appearing for Anil Krishnan was that in the light of the 2nd marriage contracted by Anil Krishnan within two days of the impugned decree of divorce, a consideration of this appeal on the merits is unwarranted and it becomes a purely academic exercise. According to the learned counsel, the 2nd marriage has been contracted after the passing of the decree for divorce and it, therefore, does not offend Sec. 5 of the Hindu Marriage Act,

1955. The Submission, in short, is that the second marriage is not contracted during the subsistence of the earlier marriage which has been validly dissolved by a decree of divorce. On 25-10-2005 Anil Krishnan had filed petition along with an affidavit in this Court for reception in evidence the marriage certificate under the Hindu Marriage Act to show that on 26-11-2001, he married one Sujatha Menon hailing from Cheroor in Thrissur District. The said certificate is marked in this appeal as Ext.A2.

24. We are again afraid that we are unable to accept the above contention. Sec. 15 of the Hindu Marriage Act reads as follows:

> "15. Divorced persons when may marry again :- When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again".

Under sub section 4 of Section 28 of the Hindu marriage Act, the time for filing an appeal against a decree of divorce is 90 days. Thus, the respondent/husband ought to have waited for a minimum 90 days from the date of decree to remarry. Instead,

by getting married again within two days of the impugned decree, he cannot pre-empt the appeal filed by the wife. In ***AIR 1967 SC 581 - Smt. Chandra Mohini Srivastava v. Shri Avinash Prasad Srivastava and Another,*** the question arose as to whether the contracting of a second marriage by the husband after the appellate decree and during the pendency of an application for special leave to appeal to the Supreme Court was legal and valid so as to revoke the special leave granted to the wife and dismiss the resultant appeal as infructous. Dealing with that question, the Apex court held as follows:

> "Before we deal with the merits of the appeal, we may refer to an application (CMP No. 2935 of 1966) filed on behalf of the first respondent, in which he prays that the special leave granted to the appellant be revoked. The grounds taken for revocation of special leave are that the High Court granted divorce to the first respondent and ordered that its decree should take effect forthwith, with the result that the marriage between the appellant and the first respondent stood dissolved on January 87, 1964, when the High Court allowed the appeal. The special leave petition was presented in this Court on April 7, 1964 and the appellant did not convey to the first respondent that she was intending to challenge the decision of the High Court. She also did not pray for the stay of operation of the order of the High Court. The first respondent

therefore believed that she had submitted to the order of the High Court and married another woman on July 2, 1964. Special leave was granted to the appellant by this Court on August 25, 1964, and it was only on September 9, 1964 when the first respondent got notice of the grant of special leave that he came to know that the judgment of the High Court was under appeal in this Court. In the meantime he had already married another woman and a son was born to that woman on May 20, 1965. The first respondent therefore contended that because of the negligence of the appellant in not informing him that she was applying to this Court for special leave, he had married again and his new wife had given birth to a son, and in consequence this Court should now revoke the special leave that was granted so that the new child might not become illegitimate.

6) The application has been opposed on behalf of the appellant and it is contended that it was no part of her duty to inform the first respondent that she was intending to apply to this Court for special leave. It was also contended that it was for the first respondent to make sure before marrying that no further steps had been taken by the appellant after the judgment of the High Court and in this connection she relied on Sec. 15 and 28 of the Act. In any case it is urged that the fact that the first respondent took the risk of marrying without making sure whether any further steps had been taken by the appellant was no ground for revocation of special leave. It was also pointed out that though the first respondent had been served as far back as September 9, 1964, he made the application for revocation of special leave. It was also pointed out that though the first respondent had been served as far back as September 9, 1964, he made the application for revocation of special leave only on September 15, 1966, when the appeal was ready for

hearing.

7) We are of opinion that special leave cannot be revoked on grounds put forward on behalf of the first respondent. section 28 of the Act inter alia provides that all decrees and others made by the Court in any proceedings under the Act may be appealed from under any law for the time being in force, as if they were decrees and orders of the Court made in the exercise of its original civil jurisdiction. Section 15 provides that “when a marriage has been dissolved by a decree of divorce and there is no right of appeal against the decree, or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again”. These two sections make it clear that where a marriage has been dissolved, either party to the marriage can lawfully marry only when there is no right of appeal against the decree dissolving the marriage or, if there is such a right of appeal, the time for filing appeal has expired without an appeal having been presented, or if an appeal has been presented it has been dismissed. It is true that S. 15 does not in terms apply to a case of an application for special leave to this Court. Even so, we are of opinion that the party who has won in the High Court and got a decree of dissolution of marriage cannot be marrying immediately after the High Court's decree and thus take away from the losing party the chance of presenting an application for special leave. Event hough S. 15 may not apply in terms and it may not have been lawful for the first respondent to have married immediately after the High Court's decree, for no appeal as of right lies from the decree of the High Court to his Court in this matter, we still think that it was for the first respondent to make sure whether an application for special leave had been filed in this Court

> and he could not by marrying immediately after the High Court's decree deprive the appellant of the chance to present a special leave petition to this Court. If a person does so, he takes a risk and cannot ask this Court to revoke the special leave on this ground. We need not consider the question as to whether the child born to the new wife on May 20, 1965 would be legitimate or not, except to say that in such a situation S. 16 of the Act may come to the aid of the new child. We cannot, therefore, revoke the special leave on the grounds put forward on behalf of the first respondent and hereby dismiss his application for revocation of special leave".

25. We, therefore, hold that the conduct of the husband in contracting a second marriage during the statutory waiting period does not and cannot stand in the way of a consideration of this appeal on the merits. This point is answered against the husband and in favour of the wife.

POINT NO. E.

26. There are a few interlocutory applications which have been hanging fire for some time. I.A. 2285/2005 is an application filed on 27-7-2005 in this appeal by Suchitra under Section 24 of the Hindu Marriage Act claiming interim maintenance to herself and her minor daughter at the rate of Rs. 15,000/- and 750o/- per month respectively from 2-6-1999

onwards (i.e. the date of original petition) till the disposal of this appeal. Another Bench of this Court, after considering the rival contentions of the parties had as per order dated 25-10-2005 relegated the question oF ordering separate maintenance to the wife to a later stage but directed the husband to pay interim maintenance to his child at the rate of Rs. 2,000/- per month from 1-1-2000 till 31-7-2005 and thereafter at the rate of Rs. 2,500/- per month. Eventhough it is now contended before us that under Section 24 of the Act no interim maintenance is awardable to the child, no such objection was raised by the husband in his counter to the said I.A. That apart, in the light of the decisions in ***Jasbir Kaur Sehgal v. District Judge, Dehradun and Others - 1997 (7) SCC 7*** and ***Praveen Menon v. Ajitha K. Pillai - 2001 (3) KLT 450 and Damodaran v. Meera - 1986 KLT 1020,*** wife's right to maintenance includes maintenance to the child as well.

27. Anil Krishnan is stated to be employed at present as General Manager of Hotel Sudarsan at Kollam. He has a car and he comes to Ernakulam in that Car. The house at Panampilly

Nagar which according to Suchitra is worth more than Rs. 75 lakhs has admittedly been sold. Except stating that the house belonged to his father, Anil Krishnan has not chosen to produce any material in support of the same. He is a member of Lotus Club at Ernakulam. He is maintaining another wife. As against this, after the matrimonial estrangement, Suchitra studied and creditably passed journalism, she did her L.L.B and L.L.M all at her own expense. Anil Krishnan has no case that he had spent the money for her studies. Suchitra has now joined the office of her father who is an Advocate practicing at Alappuzha. The wife is entitled to live a life in accordance with the status of her husband. ***(Vide Ramdass v. Malathi - 2000 (1) KLT (SN) 12).*** Unlike Anil Krishnan, she has not contracted another marriage. When the wife says that she is unable to maintain herself, it is for the husband who contends otherwise to substantiate his contention. No attempt in that behalf has been made by Anil Krishnan. Considering the totality of the facts and circumstances of the case we are of the view that Anil Krishnan is liable to pay interim maintenance to Suchitra at the rate of Rs.

3000/- (Rupees three thousand only) per month from 7-1-2002 (date of filing this appeal) till this date. He is given two months to pay the said amount to Suchitra failing which Suchitra will be entitled to levy execution proceedings to recover the same.

28. I.A. 1092/2006 is an application filed by Suchitra on 16-6-2006 seeking enhancement of the interim maintenance to Gouri to Rs. 5,000/- per month. Gouri has now attained 15 years of age. Anil Krishnan has not cared to see the child for the last 14 years. Instead, he was more interested in contracting another marriage. We are of the view that having regard to the growing age of Gouri and the increased demand for her expenses and the capacity and obligation of Anil Krishnan to bare the expenses of his daughter, Gouri is entitled to a sum of Rs. 4,000/- (Rupees four thousand only) per month from 25-10-2005 that is, the date on which the earlier Division Bench passed orders on I.A. 2285 of 2005. The enhanced liability shall also be co-terminus with the disposal of this appeal. Anil Krishnan shall pay all arrears including those at the enhanced rate to Gouri within two months from today failing which

Suchitra shall be entitled to levy execution proceedings for recovery of the same.

29. I.A. 144/07 is an application filed by Anil Krishnan under Section 26 of the Hindu Marriage Act, seeking custody of his daughter Gouri so as to allow him to look after her maintenance, education and other needs. Suchitra has vehemently opposed this application by filing a detailed counter. Anil Krishnan is a father who has not cared to see his daughter for the past 14 years. It is well settled that it is the welfare of the child which is of paramount consideration while ordering custody. The present surge of love and affection suddenly exhibited by Anil Krishnan towards his adolescent daughter is nothing but a facade to camouflage his real intention of avoiding the payment of maintenance to his daughter. Admittedly, he has married one Sujatha Menon on 26-11-2001. A father who contracts another marriage after divorce cannot ordinarily be held entitled to custody of the minor girl. ***(See Yusuf v. Sakkeena - AIR 1999 Kerala 54).*** Having regard to the normal course of human conduct Gouri may not be a

welcome guest in her father's house where she cannot ordinarily expect her stepmother (a stranger) to shower on her the nectar of love and affection. We are, therefore, not inclined to give custody of Gouri to Anil Krishnan. We, however, leave the matter open for Anil Krishnan to move the Family Court for appropriate orders including one for visiting rights.

In the result, we allow this appeal and set aside the decree of divorce passed by the Family Court. O.P. No. 363 of 1999 filed by Anil Krishnan before the Family Court will stand dismissed with costs. Suchitra shall be entitled to her costs in this appeal. We also dispose of the interlocutory applications in the manner indicated herein above.

(K.K.DENESAN, JUDGE)

(V.RAMKUMAR, JUDGE)

ani.

K.K.DENESAN & V. RAMKUMAR, JJ.

M.F.A.NO.78 OF 2002

JUDGMENT

Dt. APRIL , 2007